

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

**In re:**

**Bankr. No. 20-31117**

**COLETTE M BREITER**

**Chapter 7**

**Debtor.**

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**MOTION OBJECTING TO CHAPTER 7 DISCHARGE  
UNDER 727(a)(8)**

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The United States Trustee for Region 12 moves the Court for an order denying the discharge of the debtor Colette M. Breiter. In support of his motion, he states the following:

1. The Court will hold a hearing on this motion at 11:30 a.m. on Tuesday June 9, 2020, before the United States Bankruptcy Court, Courtroom No.2B, Second Floor, 316 North Robert Street, St. Paul, Minnesota.
2. Any response to this motion must be filed and delivered not later than Thursday June 4, 2020, which is five days before the time set for the hearing (including Saturdays, Sundays and legal holidays). Local Bankruptcy Rule 9006-1. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**
3. The Court has jurisdiction of this matter pursuant to 28 U.S.C. §§1334(a) & (b); 28 U.S.C. §§157(a) & (b)(1); 28 U.S.C. §151 and Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This is a core proceeding pursuant to 28 U.S.C. §§157(b)(2)(A) & (B).
4. This motion arises under 11 U.S.C. §727(a)(8) and Fed. R. Bankr. P. 2002 and 4004. This motion is filed under FED.R.BANKR.P. 9014 and Local Rules 9013-1 to 9013-5. This motion is filed within the 60 day period to object to a discharge under Rule 4004(a).

5. The debtor filed this case on April 17, 2020. *See* Ex. 1 (Docket Case No. 20-31117).

6. The debtor filed a previous chapter 7 case on June 25, 2020. She received a chapter 7 discharge on September 25, 2012 in the prior case. *See* Att. Ex. 2 (Docket Case No. 12-33784).

7. The prior bankruptcy case was not disclosed in the debtor's petition.<sup>1</sup> *See* Att. Ex. 3 (Petition).

8. Pursuant to 11 U.S.C. §727(a)(8), the debtor has been granted a discharge under Section 727 in a case commenced within eight years before the date of filing the petition in the present case.

WHEREFORE, the U.S. Trustee requests that the Bankruptcy Court deny the discharge of the debtor in this case.

Dated: May 5, 2020

JAMES L. SNYDER  
ACTING UNITED STATES TRUSTEE  
REGION 12

BY: /s/ Sarah J. Wencil  
Sarah J. Wencil  
Trial Attorney  
1015 U.S. Courthouse  
300 South Fourth St.  
Minneapolis, MN 55415  
(612) 334-1350  
IA ATTY NO. 14014

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<sup>1</sup> The debtor is represented by the same counsel in the prior case. In instances where the same counsel represented the debtor in the prior case, the UST requests that counsel return the fee charged to the debtor in the present case, if no other purpose was served by the bankruptcy case filing. An inquiry has been made in the present case contemporaneously with the filing of the motion.

## Exhibit 1

**US Bankruptcy Court  
District of Minnesota (St Paul)  
Bankruptcy Petition #: 20-31117**

Assigned to: Judge William J Fisher  
Chapter 7  
Voluntary  
No asset

Date filed: 04/17/2020  
341 meeting: 05/20/2020  
Deadline for objecting to discharge: 07/20/2020  
Deadline for financial mgmt. course: 07/20/2020

**Debtor 1**  
**COLETTE M BREITER**  
47557 120TH ST  
BLUE EARTH, MN 56013  
FARIBAULT-MN  
SSN / ITIN: xxx-xx-4977

represented by **Mark C. Halverson**  
Halverson Law Office  
PO Box 3544  
Mankato, MN 56002  
507-345-1535  
Fax : 507-345-6407  
Email: [HALANLAW@HALVERSON.COM](mailto:HALANLAW@HALVERSON.COM)

**Trustee**  
**Michael S. Dietz**  
Dunlap & Seeger PA  
30 3rd Street SE Suite 400  
Rochester, MN 55903  
507-288-9111

**U.S. Trustee**  
**US Trustee**  
1015 US Courthouse  
300 S 4th St  
Minneapolis, MN 55415  
612-334-1350

Filing Date	#	Docket Text
04/17/2020	<a href="#">1</a> (55 pgs)	Chapter 7 voluntary petition for individuals re: COLETTE M BREITER. Fee Amount \$335.00 (Halverson, Mark) (Entered: 04/17/2020)
04/17/2020		Receipt of Voluntary chapter 7 petition(20-31117) [misc,volp7] ( 335.00) Filing Fee. Receipt number 11697185. Fee amount 335.00. (U.S. Treasury) (Entered: 04/17/2020)
04/17/2020		List of Creditors load 20 creditors added (ADIClerk) (Entered: 04/17/2020)
04/17/2020	<a href="#">2</a> (1 pg)	Certificate of credit counseling filed by COLETTE M BREITER. (Halverson, Mark) (Entered: 04/17/2020)

04/17/2020	<a href="#">3</a> (2 pgs)	Disclosure of compensation of attorney for debtor. (Halverson, Mark) (Entered: 04/17/2020)
04/17/2020	<a href="#">4</a> (5 pgs)	Debtor's income records. (Halverson, Mark) (Entered: 04/17/2020)
04/17/2020	<a href="#">5</a> (5 pgs)	Notice of responsibilities of chapter 7 debtors and their attorneys filed by COLETTE M BREITER and Mark C. Halverson. (Halverson, Mark) (Entered: 04/17/2020)
04/17/2020	<a href="#">6</a> (1 pg)	Signature declaration filed by COLETTE M BREITER. (Halverson, Mark) (Entered: 04/17/2020)
04/20/2020		Notice of debtor's prior filings for debtor COLETTE M BREITER Case Number <a href="#">04-33663</a> , Chapter 7 filed in Minnesota Bankruptcy Court on 06/22/2004 , Standard Discharge on 10/05/2004; Case Number <a href="#">12-33784</a> , Chapter 7 filed in Minnesota Bankruptcy Court on 06/25/2012 , Standard Discharge on 09/25/2012; Case Number <a href="#">89-34077</a> , Chapter 7 filed in Washington Western Bankruptcy Court on 10/30/1989 , Standard Discharge on 02/08/1990.(Admin) (Entered: 04/20/2020)
04/20/2020		Notice of ineligibility for discharge.(Admin) (Entered: 04/20/2020)
04/20/2020	<a href="#">7</a> (2 pgs)	Meeting of Creditors. Trustee Michael S. Dietz assigned to the case. 341(a) meeting to be held on 5/20/2020 at 10:30 AM at ***VIDEO/TELECONFERENCE ONLY***. Certificate of completion of financial management course due 7/20/2020. Last day to object to discharge is 7/20/2020. Last day to challenge dischargeability of some debts: 7/20/2020. (Barbie MNBS) (Entered: 04/20/2020)
04/22/2020	<a href="#">8</a> (4 pgs)	BNC Certificate of mailing - Meeting of creditors. Notice Date 04/22/2020. (Admin.) (Entered: 04/22/2020)

<b>PACER Service Center</b>			
<b>Transaction Receipt</b>			
05/05/2020 11:29:35			
<b>PACER Login:</b>	wencil14014ia:2941727:4299065	<b>Client Code:</b>	
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	20-31117 Fil or Ent: filed Doc From: 0 Doc To: 99999999 Term: included Headers:

## Exhibit 2

**US Bankruptcy Court  
District of Minnesota (St Paul)  
Bankruptcy Petition #: 12-33784**

*Assigned to:* Judge Dennis D O'Brien  
Chapter 7  
Voluntary  
No asset

*Date filed:* 06/25/2012  
*Date terminated:* 10/10/2012  
*Debtor discharged:* 09/25/2012  
*341 meeting:* 07/25/2012  
*Deadline for objecting to discharge:* 09/24/2012  
*Deadline for financial mgmt. course:* 09/24/2012

*Debtor disposition:* Standard Discharge

***Debtor 1***

**COLETTE MARIE BREITER**  
47557 120TH STREET  
BLUE EARTH, MN 56013  
FARIBAULT-MN  
SSN / ITIN: xxx-xx-4977

represented by **Mark C. Halverson**

Halverson Law Office  
PO Box 3544  
Mankato, MN 56002  
507-345-1535  
Fax : 507-345-6407  
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***Trustee***

**Michael S. Dietz**  
Dunlap & Seeger PA  
30 3rd Street SE Suite 400  
Rochester, MN 55903  
507-288-9111

***U.S. Trustee***

**US Trustee**  
1015 US Courthouse  
300 S 4th St  
Minneapolis, MN 55415  
612-334-1350

Filing Date	#	Docket Text
06/25/2012	<u>1</u> (45 pgs)	Chapter 7 voluntary petition re: COLETTE MARIE BREITER. Summary of schedules and statistical summary of certain liabilities, Notice to Consumer Debtor(s) under section 342(b)(Form B 201), Schedules A-J - Forms 6A - 6J, Declaration concerning debtors schedules - Form 6, Statement of financial affairs - Form 7, Ch 7 individual debtors statement of intention - Form 8, Statement of compensation by attorney for debtor - Local Form 1007-1, Statement of current monthly income and means-test calculation (Form 22A). Fee Amount \$306.00 (Halverson, Mark) (Entered: 06/25/2012)
06/25/2012		Receipt of Voluntary chapter 7 petition(12-33784) [misc,volp7] ( 306.00) Filing Fee. Receipt number 6488219. Fee amount 306.00. (U.S. Treasury) (Entered: 06/25/2012)

06/25/2012	<a href="#">2</a> (1 pg)	Certificate of credit counseling filed by COLETTE MARIE BREITER. (Halverson, Mark) (Entered: 06/25/2012)
06/25/2012	<a href="#">3</a> (1 pg)	Debtor's income records filed by COLETTE MARIE BREITER. (Halverson, Mark) (Entered: 06/25/2012)
06/25/2012	<a href="#">4</a> (5 pgs)	Notice of responsibilities of chapter 7 debtors and their attorneys filed by COLETTE MARIE BREITER and Mark C. Halverson. (Halverson, Mark) (Entered: 06/25/2012)
06/25/2012	<a href="#">5</a> (1 pg)	Signature declaration (re: <a href="#">1</a> Voluntary chapter 7 petition) filed by COLETTE MARIE BREITER. (Halverson, Mark) (Entered: 06/25/2012)
06/26/2012	<a href="#">6</a> (2 pgs)	Meeting of Creditors. Trustee Michael S. Dietz assigned to the case. 341(a) meeting to be held on 7/25/2012 at 09:30 AM at Mtg Mankato - 401 S 2nd St, Post Office Building 2nd Fl. Certificate of completion of financial management course due 9/24/2012. Last day to object to discharge is 9/24/2012. Last day to challenge dischargeability of some debts: 9/24/2012. (Marsha MNBS) (Entered: 06/26/2012)
06/28/2012	<a href="#">7</a> (4 pgs)	BNC Certificate of mailing - Meeting of creditors. Notice Date 06/28/2012. (Admin.) (Entered: 06/29/2012)
07/09/2012	<a href="#">8</a> (1 pg)	Certificate of completion of financial management course filed by Debtor COLETTE MARIE BREITER. (Halverson, Mark) (Entered: 07/09/2012)
07/26/2012		Meeting of creditors concluded. (Dietz, Michael) (Entered: 07/26/2012)
07/27/2012		Chapter 7 Trustee's Report of No Distribution: I, Michael S. Dietz, having been appointed trustee of the estate of the above-named debtor(s), report that I have neither received any property nor paid any money on account of this estate; that I have made a diligent inquiry into the financial affairs of the debtor(s) and the location of the property belonging to the estate; and that there is no property available for distribution from the estate over and above that exempted by law. Pursuant to Fed R Bank P 5009, I hereby certify that the estate of the above-named debtor(s) has been fully administered. I request that I be discharged from any further duties as trustee. Key information about this case as reported in schedules filed by the debtor(s) or otherwise found in the case record: This case was pending for 1 months. Assets Abandoned (without deducting any secured claims): \$ 64274.25, Assets Exempt: \$ 39915.00, Claims Scheduled: \$ 53560.81, Claims Asserted: Not Applicable, Claims scheduled to be discharged without payment (without deducting the value of collateral or debts excepted from discharge): \$53560.81. (Dietz, Michael) (Entered: 07/27/2012)
08/09/2012	<a href="#">9</a> (11 pgs)	Reaffirmation agreement ( <b>Local Form 4008-1 REQUIRED</b> ) between MERCHANTS BANK NA and debtor(s). Signed by attorney.



Document Page 9 of 23  
 Property: REM (Masha MMS) (Entered: 08/10/2012)

09/25/2012	<a href="#">10</a> (2 pgs)	Order discharging debtor (Auto) (Admin.) (Entered: 09/25/2012)
09/28/2012	<a href="#">11</a> (4 pgs)	BNC Certificate of Mailing - Order of Discharge. Notice Date 09/28/2012. (Admin.) (Entered: 09/30/2012)
10/10/2012		IT IS ORDERED: The case is closed and the trustee is discharged. (Admin.) (Entered: 10/10/2012)

<b>PACER Service Center</b>			
<b>Transaction Receipt</b>			
05/05/2020 11:37:15			
<b>PACER Login:</b>	wencil14014ia:2941727:4299065	<b>Client Code:</b>	
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	12-33784 Fil or Ent: filed Doc From: 0 Doc To: 99999999 Term: included Headers: included Format: html Page counts for documents: included
<b>Billable Pages:</b>	2	<b>Cost:</b>	0.20

## Exhibit 3

**Fill in this information to identify your case:**

United States Bankruptcy Court for the:

**DISTRICT OF MINNESOTA**

Case number (if known): \_\_\_\_\_ Chapter you are filing under:

- ☒ Chapter 7  
☐ Chapter 11  
☐ Chapter 12  
☐ Chapter 13

☐ Check if this is an amended filing

Official Form 101

**Voluntary Petition for Individuals Filing for Bankruptcy**

02/20

The bankruptcy forms use you and Debtor 1 to refer to a debtor filing alone. A married couple may file a bankruptcy case together--called a joint case--and in joint cases, these forms use you to ask for information from both debtors. For example, if a form asks, "Do you own a car," the answer would be yes if either debtor owns a car. When information is needed about the spouses separately, the form uses Debtor 1 and Debtor 2 to distinguish between them. In joint cases, one of the spouses must report information as Debtor 1 and the other as Debtor 2. The same person must be Debtor 1 in all of the forms.

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

**Part 1: Identify Yourself**

**About Debtor 1:**

**About Debtor 2 (Spouse Only in a Joint Case):**

**1. Your full name**

Write the name that is on your government-issued picture identification (for example, your driver's license or passport).

Bring your picture identification to your meeting with the trustee.

**COLETTE**

First Name

**M**

Middle Name

**BREITER**

Last Name

Suffix (Sr., Jr., II, III)

First Name

Middle Name

Last Name

Suffix (Sr., Jr., II, III)

**2. All other names you have used in the last 8 years**

Include your married or maiden names.

First Name

Middle Name

Last Name

First Name

Middle Name

Last Name

**3. Only the last 4 digits of your Social Security number or federal Individual Taxpayer Identification number (ITIN)**

xxx - xx - 4 9 7 7

OR

9xx - xx - \_\_\_\_\_

xxx - xx - \_\_\_\_\_

OR

9xx - xx - \_\_\_\_\_

**4. Any business names and Employer Identification Numbers (EIN) you have used in the last 8 years**

Include trade names and doing business as names

☒ I have not used any business names or EINs.

Business name

Business name

Business name

☐ I have not used any business names or EINs.

Business name

Business name

Business name

Debtor 1 **COLETTE M BREITER**

Case number (if known) \_\_\_\_\_

**About Debtor 1:**

\_\_\_\_\_  
EIN

\_\_\_\_\_  
EIN

**About Debtor 2 (Spouse Only in a Joint Case):**

\_\_\_\_\_  
EIN

\_\_\_\_\_  
EIN

**5. Where you live**

**47557 120TH ST**

Number Street

Number Street

**BLUE EARTH MN 56013**  
City State ZIP Code

**Faribault**  
County

City State ZIP Code

County

**If your mailing address is different from the one above, fill it in here.** Note that the court will send any notices to you at this mailing address.

**If Debtor 2's mailing address is different from yours, fill it in here.** Note that the court will send any notices to you at this mailing address.

Number Street

Number Street

P.O. Box

P.O. Box

City State ZIP Code

City State ZIP Code

**6. Why you are choosing this district to file for bankruptcy**

*Check one:*

☒ Over the last 180 days before filing this petition, I have lived in this district longer than in any other district.

☐ I have another reason. Explain.  
(See 28 U.S.C. § 1408.)

*Check one:*

☐ Over the last 180 days before filing this petition, I have lived in this district longer than in any other district.

☐ I have another reason. Explain.  
(See 28 U.S.C. § 1408.)

**Part 2: Tell the Court About Your Bankruptcy Case**

**7. The chapter of the Bankruptcy Code you are choosing to file under**

*Check one:* (For a brief description of each, see Notice Required by 11 U.S.C. § 342(b) for Individuals Filing for Bankruptcy (Form 2010)). Also, go to the top of page 1 and check the appropriate box.

- ☒ Chapter 7  
☐ Chapter 11  
☐ Chapter 12  
☐ Chapter 13

Debtor 1 COLETTE M BREITER Case number (if known) \_\_\_\_\_

8. How you will pay the fee ☒ **I will pay the entire fee when I file my petition.** Please check with the clerk's office in your local court for more details about how you may pay. Typically, if you are paying the fee yourself, you may pay with cash, cashier's check, or money order. If your attorney is submitting your payment on your behalf, your attorney may pay with a credit card or check with a pre-printed address.
- ☐ **I need to pay the fee in installments.** If you choose this option, sign and attach the Application for Individuals to Pay The Filing Fee in Installments (Official Form 103A).
- ☐ **I request that my fee be waived** (You may request this option only if you are filing for Chapter 7. By law, a judge may, but is not required to, waive your fee, and may do so only if your income is less than 150% of the official poverty line that applies to your family size and you are unable to pay the fee in installments). If you choose this option, you must fill out the Application to Have the Chapter 7 Filing Fee Waived (Official Form 103B) and file it with your petition.
9. Have you filed for bankruptcy within the last 8 years? ☒ No
- ☐ Yes.
- District \_\_\_\_\_ When \_\_\_\_\_ Case number \_\_\_\_\_  
MM / DD / YYYY
- District \_\_\_\_\_ When \_\_\_\_\_ Case number \_\_\_\_\_  
MM / DD / YYYY
- District \_\_\_\_\_ When \_\_\_\_\_ Case number \_\_\_\_\_  
MM / DD / YYYY
10. Are any bankruptcy cases pending or being filed by a spouse who is not filing this case with you, or by a business partner, or by an affiliate? ☒ No
- ☐ Yes.
- Debtor \_\_\_\_\_ Relationship to you \_\_\_\_\_
- District \_\_\_\_\_ When \_\_\_\_\_ Case number, \_\_\_\_\_  
MM / DD / YYYY if known
- Debtor \_\_\_\_\_ Relationship to you \_\_\_\_\_
- District \_\_\_\_\_ When \_\_\_\_\_ Case number, \_\_\_\_\_  
MM / DD / YYYY if known
11. Do you rent your residence? ☒ No. Go to line 12.
- ☐ Yes. Has your landlord obtained an eviction judgment against you?
- ☐ No. Go to line 12.
- ☐ Yes. Fill out Initial Statement About an Eviction Judgment Against You (Form 101A) and file it as part of this bankruptcy petition.

Debtor 1 **COLETTE M BREITER**

Case number (if known) \_\_\_\_\_

**Part 3: Report About Any Businesses You Own as a Sole Proprietor**

**12. Are you a sole proprietor of any full- or part-time business?**

- ☒ No. Go to Part 4.  
☐ Yes. Name and location of business

A sole proprietorship is a business you operate as an individual, and is not a separate legal entity such as a corporation, partnership, or LLC.

\_\_\_\_\_  
Name of business, if any

\_\_\_\_\_  
Number Street

If you have more than one sole proprietorship, use a separate sheet and attach it to this petition.

\_\_\_\_\_  
City State ZIP Code

*Check the appropriate box to describe your business:*

- ☐ Health Care Business (as defined in 11 U.S.C. § 101(27A))  
☐ Single Asset Real Estate (as defined in 11 U.S.C. § 101(51B))  
☐ Stockbroker (as defined in 11 U.S.C. § 101(53A))  
☐ Commodity Broker (as defined in 11 U.S.C. § 101(6))  
☐ None of the above

**13. Are you filing under Chapter 11 of the Bankruptcy Code and are you a small business debtor?**

*If you are filing under Chapter 11, the court must know whether you are a small business debtor so that it can set appropriate deadlines. If you indicate that you are a small business debtor, you must attach your most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).*

- ☒ No. I am not filing under Chapter 11.  
☐ No. I am filing under Chapter 11, but I am NOT a small business debtor according to the definition in the Bankruptcy Code.  
☐ Yes. I am filing under Chapter 11, I am a small business debtor according to the definition in the Bankruptcy Code, and I do not choose to proceed under Subchapter V of Chapter 11.  
☐ Yes. I am filing under Chapter 11, I am a small business debtor according to the definition in the Bankruptcy Code, and I choose to proceed under Subchapter V of Chapter 11.

For a definition of small business debtor, see 11 U.S.C. § 101(51D).

**Part 4: Report If You Own or Have Any Hazardous Property or Any Property That Needs Immediate Attention**

**14. Do you own or have any property that poses or is alleged to pose a threat of imminent and identifiable hazard to public health or safety? Or do you own any property that needs immediate attention?**

- ☒ No  
☐ Yes. What is the hazard?

If immediate attention is needed, why is it needed?

*For example, do you own perishable goods, or livestock that must be fed, or a building that needs urgent repairs?*

Where is the property?

\_\_\_\_\_  
Number Street

\_\_\_\_\_  
City State ZIP Code

Debtor 1 **COLETTE M BREITER**

Case number (if known) \_\_\_\_\_

**Part 5: Explain Your Efforts to Receive a Briefing About Credit Counseling**

**15. Tell the court whether you have received a briefing about credit counseling.**

The law requires that you receive a briefing about credit counseling before you file for bankruptcy. You must truthfully check one of the following choices. If you cannot do so, you are not eligible to file.

If you file anyway, the court can dismiss your case, you will lose whatever filing fee you paid, and your creditors can begin collection activities again.

**About Debtor 1:**

*You must check one:*

- ☒ **I received a briefing from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, and I received a certificate of completion.**

Attach a copy of the certificate and the payment plan, if any, that you developed with the agency.

- ☐ **I received a briefing from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, but I do not have a certificate of completion.**

Within 14 days after you file this bankruptcy petition, you **MUST** file a copy of the certificate and payment plan, if any.

- ☐ **I certify that I asked for credit counseling services from an approved agency, but was unable to obtain those services during the 7 days after I made my request, and exigent circumstances merit a 30-day temporary waiver of the requirement.**

To ask for a 30-day temporary waiver of the requirement, attach a separate sheet explaining what efforts you made to obtain the briefing, why you were unable to obtain it before you filed for bankruptcy, and what exigent circumstances required you to file this case.

Your case may be dismissed if the court is dissatisfied with your reasons for not receiving a briefing before you filed for bankruptcy.

If the court is satisfied with your reasons, you must still receive a briefing within 30 days after you file. You must file a certificate from the approved agency, along with a copy of the payment plan you developed, if any. If you do not do so, your case may be dismissed.

Any extension of the 30-day deadline is granted only for cause and is limited to a maximum of 15 days.

- ☐ **I am not required to receive a briefing about credit counseling because of:**

☐ **Incapacity.** I have a mental illness or a mental deficiency that makes me incapable of realizing or making rational decisions about finances.

☐ **Disability.** My physical disability causes me to be unable to participate in a briefing in person, by phone, or through the internet, even after I reasonably tried to do so.

☐ **Active duty.** I am currently on active military duty in a military combat zone.

If you believe you are not required to receive a briefing about credit counseling, you must file a motion for waiver of credit counseling with the court.

**About Debtor 2 (Spouse Only in a Joint Case):**

*You must check one:*

- ☐ **I received a briefing from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, and I received a certificate of completion.**

Attach a copy of the certificate and the payment plan, if any, that you developed with the agency.

- ☐ **I received a briefing from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, but I do not have a certificate of completion.**

Within 14 days after you file this bankruptcy petition, you **MUST** file a copy of the certificate and payment plan, if any.

- ☐ **I certify that I asked for credit counseling services from an approved agency, but was unable to obtain those services during the 7 days after I made my request, and exigent circumstances merit a 30-day temporary waiver of the requirement.**

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- ☐ **I am not required to receive a briefing about credit counseling because of:**

☐ **Incapacity.** I have a mental illness or a mental deficiency that makes me incapable of realizing or making rational decisions about finances.

☐ **Disability.** My physical disability causes me to be unable to participate in a briefing in person, by phone, or through the internet, even after I reasonably tried to do so.

☐ **Active duty.** I am currently on active military duty in a military combat zone.

If you believe you are not required to receive a briefing about credit counseling, you must file a motion for waiver of credit counseling with the court.

Debtor 1 **COLETTE M BREITER**

Case number (if known) \_\_\_\_\_

**Part 6: Answer These Questions for Reporting Purposes**

- 16. What kind of debts do you have?**
- 16a. Are your debts primarily consumer debts?** *Consumer debts* are defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or household purpose."
- ☐ No. Go to line 16b.
- ☒ Yes. Go to line 17.
- 16b. Are your debts primarily business debts?** *Business debts* are debts that you incurred to obtain money for a business or investment or through the operation of the business or investment.
- ☐ No. Go to line 16c.
- ☐ Yes. Go to line 17.
- 16c.** State the type of debts you owe that are not consumer or business debts.
- 
- 17. Are you filing under Chapter 7?**
- ☐ No. I am not filing under Chapter 7. Go to line 18.
- ☒ Yes. I am filing under Chapter 7. Do you estimate that after any exempt property is excluded and administrative expenses are paid that funds will be available to distribute to unsecured creditors?
- ☒ No
- ☐ Yes
- 18. How many creditors do you estimate that you owe?**
- |  |  |  |
|--|--|--|
| <input checked="" type="checkbox"/> 1-49 | <input type="checkbox"/> 1,000-5,000   | <input type="checkbox"/> 25,001-50,000     |
| <input type="checkbox"/> 50-99           | <input type="checkbox"/> 5,001-10,000  | <input type="checkbox"/> 50,001-100,000    |
| <input type="checkbox"/> 100-199         | <input type="checkbox"/> 10,001-25,000 | <input type="checkbox"/> More than 100,000 |
| <input type="checkbox"/> 200-999         |  |  |
- 19. How much do you estimate your assets to be worth?**
- |   |  |  |
|---|--|--|
| <input type="checkbox"/> \$0-\$50,000                   | <input type="checkbox"/> \$1,000,001-\$10 million    | <input type="checkbox"/> \$500,000,001-\$1 billion     |
| <input type="checkbox"/> \$50,001-\$100,000             | <input type="checkbox"/> \$10,000,001-\$50 million   | <input type="checkbox"/> \$1,000,000,001-\$10 billion  |
| <input checked="" type="checkbox"/> \$100,001-\$500,000 | <input type="checkbox"/> \$50,000,001-\$100 million  | <input type="checkbox"/> \$10,000,000,001-\$50 billion |
| <input type="checkbox"/> \$500,001-\$1 million          | <input type="checkbox"/> \$100,000,001-\$500 million | <input type="checkbox"/> More than \$50 billion        |
- 20. How much do you estimate your liabilities to be?**
- |  |  |  |
|--|--|--|
| <input checked="" type="checkbox"/> \$0-\$50,000 | <input type="checkbox"/> \$1,000,001-\$10 million    | <input type="checkbox"/> \$500,000,001-\$1 billion     |
| <input type="checkbox"/> \$50,001-\$100,000      | <input type="checkbox"/> \$10,000,001-\$50 million   | <input type="checkbox"/> \$1,000,000,001-\$10 billion  |
| <input type="checkbox"/> \$100,001-\$500,000     | <input type="checkbox"/> \$50,000,001-\$100 million  | <input type="checkbox"/> \$10,000,000,001-\$50 billion |
| <input type="checkbox"/> \$500,001-\$1 million   | <input type="checkbox"/> \$100,000,001-\$500 million | <input type="checkbox"/> More than \$50 billion        |



Debtor 1 COLETTE M BREITER Case number (if known) \_\_\_\_\_

**Part 7: Sign Below**

**For you**

I have examined this petition, and I declare under penalty of perjury that the information provided is true and correct.

If I have chosen to file under Chapter 7, I am aware that I may proceed, if eligible, under Chapter 7, 11, 12, or 13 of title 11, United States Code. I understand the relief available under each chapter, and I choose to proceed under Chapter 7.

If no attorney represents me and I did not pay or agree to pay someone who is not an attorney to help me fill out this document, I have obtained and read the notice required by 11 U.S.C. § 342(b).

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

I understand making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to \$250,000, or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

**X** /s/ COLETTE M BREITER  
COLETTE M BREITER, Debtor 1

Executed on 04/17/2020  
MM / DD / YYYY

**X** \_\_\_\_\_  
Signature of Debtor 2

Executed on \_\_\_\_\_  
MM / DD / YYYY

Debtor 1 **COLETTE M BREITER**

Case number (if known)

**For your attorney, if you are represented by one**

**If you are not represented by an attorney, you do not need to file this page.**

I, the attorney for the debtor(s) named in this petition, declare that I have informed the debtor(s) about eligibility to proceed under Chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each chapter for which the person is eligible. I also certify that I have delivered to the debtor(s) the notice required by 11 U.S.C. § 342(b) and, in a case in which § 707(b)(4)(D) applies, certify that I have no knowledge after an inquiry that the information in the schedules filed with the petition is incorrect.

**X /s/ Mark C. Halverson**

Signature of Attorney for Debtor

Date **04/17/2020**

MM / DD / YYYY

**Mark C. Halverson**

Printed name

**Halverson Law Office**

Firm Name

**600 South Second Street**

Number Street

**P.O. Box 3544**

**Mankato**

City

**MN**

State

**56002**

ZIP Code

Contact phone **(507) 345-1535**

Email address **halanlaw@halverson.com**

**124217**

Bar number

**MN**

State

VERIFICATION

I, Sarah J. Wencil, trial attorney for the United States Trustee, the movant named in the foregoing motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on: May 5, 2020

Signed: /s/ Sarah J. Wencil  
Sarah J. Wencil  
Trial Attorney

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

**In re:**

**Bankr. No. 20-31117**

**COLETTE M BREITER**

**Chapter 7**

**Debtor.**

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**MEMORANDUM OF LAW**

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As of December 1, 2010, Federal Bankruptcy Rule 4004(d) was amended to provide that objections to discharges under 11 U.S.C. § 727(a)(8) be brought by motion and governed by Federal Rule 9014.

**STATUTORY AUTHORITY**

Section 727(a)(8) provides: “The court shall grant the debtor a discharge unless -- (8) the debtor has been granted a discharge under this section, under section 1141 of this title, or under section 14, 371, or 476 of the Bankruptcy Act, in a case commenced within 8 years before the date of the filing of the petition.” 11 U.S.C. §727(a)(8). The 8 year bar to filing applies prospectively to all cases commenced after the 2005 act was effective, which extended the time bar from 6 years to 8 years. BANKRUPTCY LAW MANUAL, Vol. II ¶ 10:35, at pp.10-139 to 10-140; *In re McKittrick*, 349 B.R. 569 (Bankr. W.D. Wis. 2006).

Under Section 727(a)(8), the United States Trustee must show the following:

- (1) the debtor was granted a discharge in a previous case;
- (2) the previous case was commenced within eight years before the date of the filing of the current petition.

The debtor filed this case on April 17, 2020. The debtor filed a previous chapter 7 case on June 25, 2012 and received a discharge in that case. The present case was filed within 8 years of

the commencement of the prior case.

The limitation under Section 727(a)(8) is absolute and does not provide for exception. *See e.g. In re Haney*, 241 B.R. 430, 432- 433 (Bankr. E.D. Ark. 1999)(holding that debtor could not dismiss current Chapter 7 case to refile so that debts incurred since petition could be scheduled because motion was attempt to circumvent § 727(a)(8))(citing *In re Compston*, 161 B.R. 636 (Bankr. N. D.Ohio 1993); *In re Carroll*, 24 B.R. 83 (Bankr. N. D. Ohio 1982); *In re Flack*, 19 B.R. 251 (Bankr. N. D. Iowa 1982); *In re Kimball*, 19 B.R. 300 (Bankr. D. Me.1982); *Hammerer v. Internal Revenue Service*, 18 B.R. 524 (Bankr. E. D. Wis.1982); *In re Poirier*, 16 B.R. 691 (Bankr. D. Conn.1982); *In re Reynolds*, 4 B.R. 703 (Bankr. D. Me.1980); *see also In re Schwartz*, 58 B.R. 923 (Bankr. S.D.N.Y.1986); *In re Mathis Insurance Agency, Inc.*, 50 B.R. 482 (Bankr. E. D. Ark.1985)).

Accordingly, the debtor is not entitled to a discharge under chapter 7 in this case.

### CONCLUSION

The U.S. Trustee requests that the Court grant his objection and deny the discharge of the debtor in this case.

Dated: May 5, 2020

JAMES L. SNYDER  
ACTING UNITED STATES TRUSTEE  
Region 12

/s/ Sarah J. Wencil  
Sarah J. Wencil  
Trial Attorney  
IA Atty # 14014  
Office of the United States Trustee  
U.S. Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415  
(612) 334-1350

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

**In re:**

**Bankr. No. 20-31117**

**COLETTE M BREITER**

**Chapter 7**

**Debtor.**

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**UNSWORN CERTIFICATE OF SERVICE**

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The undersigned declares under penalty of perjury that on 3/29/2019, I electronically filed the following: Objection, Verification, Memorandum, and proposed Order, thereby generating electronic service by CM/ECF. I also served the debtor and counsel by first class mail at the addresses stated below:

**COLETTE M BREITER**  
47557 120TH ST  
BLUE EARTH, MN 56013

**Mark C. Halverson**  
Halverson Law Office  
PO Box 3544  
Mankato, MN 56002

Michael Dietz  
CM/ECF

Executed on: May 5, 2020

/s/ Sarah J. Wencil  
**Sarah J. Wencil**  
**Office of the United States Trustee**

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

**In re:**

**Bankr. No. 20-31117**

**COLETTE M BREITER**

**Chapter 7**

**Debtor.**

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**ORDER**

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At St. Paul, Minnesota.

The United States Trustee's motion to object to the discharge of the debtor under 11 U.S.C. §727(a)(8) (Docket No. 22) came before the court.

Based on the motion, the file, and the record of the proceedings herein,

**IT IS HEREBY ORDERED:**

The discharge of Colette M. Breiter is denied pursuant to Section 727(a)(8).

Dated: \_\_\_\_\_

\_\_\_\_\_  
William J. Fisher  
United States Bankruptcy Court